

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.5376 OF 1985

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

LAXMANJI MATHURJI

VERSUS

THE EXE. ER., CONSTRUCTION ROAD & BLDG., AHD.

Appearance:

MR PH PATHAK for Petitioner

SMT. SIDDHI TALATI for Respondent

Coram: S.K. Keshote,J

Date of decision:15/08/1997

C.A.V. JUDGMENT

#. Heard learned counsel for the parties.

#. There is no dispute that the petitioner has been given appointment by respondent No.2 from time to time for fixed term. This appointment was given only on temporary basis. The last appointment came to be given for the period from 14th February 1985 to 14th March 1985. The petitioner has not been given appointment thereafter. It is case of the petitioner that after his last appointment, the respondent has adopted tactics and given employment to the petitioner by change of name, i.e. in the name of his brother. The petitioner has come up before this Court with prayer that the artificial breaks given in employment may be declared illegal and further the respondent may be restrained from terminating the services of the petitioner.

#. It is admitted case of petitioner that on 31st December 1985 his services were terminated and he is challenging his termination before this Court.

#. The respondent had filed reply to the Special Civil Application and contended that the petitioner is not in their service. His brother is in service.

#. The petitioner challenged the termination of his services on the ground of violation of Section 25F of the Industrial Disputes Act, 1947. In view of admitted facts raised in Special Civil Application as well as the fact that the petitioner was given fixed term appointment, the appropriate remedy for the petitioner would have been to raise an industrial dispute rather than to approach this Court under Article 226 of the Constitution. The petitioner has an efficacious statutory alternative remedy available for adjudication of the dispute which has been raised by him in this Special Civil Application. For the purpose of deciding the controversy of the nature which has been raised by petitioner in this Special Civil Application, evidence may be necessary and that can only be taken by the Labour Court or Tribunal only on raising industrial dispute. The petitioner is seeking protection under Section 25F of the Industrial Disputes Act, 1947. Where the petitioner takes protection under some particular statute, then for the enforcement of the same, remedy available or provided under the said statute has to be availed of. Taking into consideration the totality of the facts of the case, approach to this Court by the petitioner in the facts of this case, circumventing the remedy of raising industrial dispute, is not proper.

#. In the result, this Special Civil Application is dismissed only on the ground of availability of alternative remedy in the matter. However, it is made clear that in case the petitioner raised industrial dispute in the matter, the concerned authority may not decline to refer the same for adjudication to Labour Court or Tribunal, as the case may be, only on the ground of delay in approaching to it by the petitioner. The Special Civil Application fails and the same is dismissed. Rule discharged subject to aforesaid observations. No order as to costs.

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